XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 1504 of 2000

APPELLANT
IN JAIL

Bahur,
S/o Ramratan Kewat,
Aged about 25 years, R/o Badgaon, P.S. Hasod, District Raipur, (M.P.)

VERSUS

RESPONDENT

State of Madhya Pradesh

Present:
Mr. Rajesh Tiwari, counsel for the appellant.
Mr. G.K. Beriwal, Dy. A.G. for the State/respondent.

ORAL JUDGMENT
(7th September 2007)

Dhirendra Mishra, J

This appeal is directed against the judgment of conviction and order of sentence dated 11.4.2000 passed in S.T.No. 382/99 whereby learned Special Court constituted under Prevention of Atrocities Act, 1989, has convicted the appellant under Section 376(1) of the IPC and sentenced him to undergo R.I. for seven years.

2. Case of the prosecution in brief is that on 18.11.1998 at about 3-4 p.m. the prosecutrix, aged about 55 years, had gone to the field for collecting grass where the accused stopped her on way, fell her on the ground and rapped her. Thereafter, the prosecutrix narrated the incident to her son Ganesh (PW-2) and

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

daughter-in-law Baisakhinbai (PW-4). She also narrated the incident to other elderly people of the village, Sarpanch Murari Patel and Sahiram (PW-3) and thereafter lodged the report in Police Station Mandir Hasoud vide Ex.P/1 on 19.11.1998 at about 6.30 p.m. During investigation the petticoat, wearing apparel of the prosecutrix, was seized vide Ex.P/6. She was sent for medical examination and her medical report is Ex.P/5. Vaginal slides of the prosecutrix were also prepared. The accused remained absconding after the incident and he could be arrested only on 22.9.1999 i.e. after a period of 10 months of the incident. After completing investigation charge sheet was filed in the court of Judicial Magistrate First Class, Raipur.

3. During trial the prosecution examined five witnesses. Thereafter, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication in the crime.

4. Learned trial Court after hearing counsel for the respective parties convicted and sentenced the accused as mentioned above.

5. Learned counsel for the appellant submits that there is a delay of more than 24 hours in lodging the report, however, there is no plausible explanation for the same and the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

explanation offered by the prosecution is false as the report was lodged in the following evening. He further submits that at the time of incident prosecutrix was carrying sickle with her as she had gone to collect grass, even then when she was raped by the accused, no injury was inflicted by her over his person with the sickle, which appears to be highly improbable.

6. On the other hand, learned counsel for the State supporting the impugned judgment submits that absence of injury over the person of the accused cannot be a reason to disbelieve the version of the prosecutrix as the accused remained absconding for a period of about 10 months and therefore, injury, if any, sustained by the accused could not be confirmed by his examination after such a long period.

7. I have heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.

8. Conviction of the appellant is based on the statement of the prosecutrix (PW-1) as also that of her son Ganesh (PW-2). The conviction is also based on the medical report of Ex.P/4 where corresponding injuries have been found on the person of the prosecutrix and the F.S.L. report which is positive.

9. PW-1 the prosecutrix has stated that the incident is of last year. She had gone to the field carrying sickle. When she

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आदेश पत्रक (पूर्वानुबद्ध)

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reached the field, the accused/appellant all of a sudden came there, threw her on the ground, pressed her mouth & neck, mounted on her and rapped her and thereafter, fled from there. She narrated the incident to her daughter-in-law Baisakhinbai who communicated the same to her son Ganesh. She has stated that because of pressing of her neck by the accused, she sustained swelling over her mouth. She has also narrated the incident to Sarpanch Murari Patel, Sahiram (PW-3), Kotwar Bodhiram and other villagers who suggested her to lodge the report in police station and thereafter, she lodged the report of Ex.P/1. This witness has denied that due to weak eyesight she could not recognize the accused. However, she has admitted that she could not resist because she is an old lady. In her cross examination also she has stuck to her claim that she was rapped by the accused. There is no cross-examination by the accused with regard to his false implication from the prosecutrix. The statement of prosecutrix is duly corroborated by the statements of her son Ganesh who has stated that after returning from the field, she had told him that the accused has committed rape with her in the field and thereafter, he had gone to search the accused but could not search him as night had set in. However, he got him on the next day and tied him but somehow he managed to get himself free and absconded. The statement of the prosecutrix has also been corroborated by the statements of Sahiram and Baisakhinbai who have stated that

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आदेश पत्रक (पूर्वानुबद्ध)

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the prosecutrix herself narrated the incident to them that the accused has committed forcible intercourse with her. In the injury report also the doctor has found corresponding injuries over person of the prosecutrix and defence has not been able to demolish the version given by the prosecution witnesses and no reason has been cited for false implication of the accused/appellant.

10. Thus, in the light of aforesaid discussion, this Court is of the considered opinion that the Court below by acting upon the statements of the prosecutrix and other prosecution witnesses has not committed any illegality or infirmity in convicting and sentencing the accused/appellant as mentioned in paragraph 1 of this judgment.

11. In the result, the appeal being devoid of substance deserves to be dismissed and is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge

KJ